

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KIRK ROBINSON,

Plaintiff,

vs.

STATE OF NEBRASKA,

Defendant.

8:23CV276

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's Motion for Leave to Proceed in Forma Pauperis ("IFP"). [Filing No. 2](#). The Court has received a certified copy of Plaintiff's trust account information. [Filing No. 8](#). On August 11, 2023, Plaintiff paid the full filing fee in the amount of \$402.00. For the reasons stated below, Plaintiff's IFP Motion will be granted, in part, in that he is not required to pay the \$52.00 in administrative fees.

Prisoner plaintiffs are required to pay the full amount of the Court's \$350.00 filing fee by making monthly payments to the Court, even if the prisoner is proceeding IFP. [28 U.S.C. § 1915\(b\)](#). The Prison Litigation Reform Act ("PLRA") "makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal." *In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997); *Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951 (D. Neb. 2001).

Pursuant to [28 U.S.C. § 1915\(b\)\(1\)](#), Plaintiff must pay an initial partial filing fee in the amount of 20 percent of the greater of Plaintiff's average monthly account balance or average monthly deposits for the six months preceding the filing of the Complaint. During the past six months, Plaintiff's average monthly balance was \$40,029.65 and his average monthly deposits were \$4,870.38. See [Filing No. 8](#). Therefore, pursuant to the formula

set forth in 28 U.S.C. § 1915(b)(1), the initial partial filing fee would be \$8,005.93, based on an average monthly account balance of \$40,029.65, which is more than the \$350 filing fee for this matter. However, “[i]n no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action” 28 U.S.C. § 1915(b)(3). Accordingly, Plaintiff would be required to pay a \$350.00 filing fee at the outset of the case, as mandated by 28 U.S.C. § 1915(b). *Ashley v. Dilworth*, 147 F.3d 715, 716 (8th Cir. 1998) (“The purpose of the Prison Litigation Reform Act was to require all prisoner-litigants to pay filing fees in full, with the only issue being whether the inmate pays the entire filing fee at the initiation of the proceeding or in installments over a period of time.”). Plaintiff has satisfied this requirement with his \$402.00 payment.

The Court’s filing fee of \$402.00 for §1983 actions includes the \$350.00 filing fee set out by 28 U.S.C. § 1914(a) and the additional \$52.00 administrative fee required when filing all civil actions. See 28 U.S.C. § 1914, *Judicial Conference Schedule of Fees*, No. 14 (“Administrative fee for filing a civil action, suit, or proceeding in a district court, \$52.”). Prisoners granted IFP status are not required to pay the \$52.00 administrative fee under the PLRA. Thus, the \$52.00 in administrative fees is an overpayment in this case.

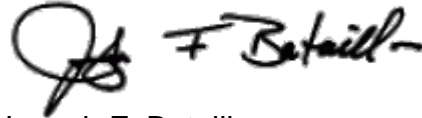
IT IS THEREFORE ORDERED that:

1. Plaintiff’s Motion for Leave to Proceed IFP, [Filing No. 2](#), is granted.
2. The Clerk of Court is directed to determine whether Plaintiff’s overpayment should be applied to any of Plaintiff’s previous pro se cases that have an outstanding balance. If none of Plaintiff’s previous pro se cases have an outstanding balance, the Clerk of Court is directed to process a refund to Plaintiff in due course.
3. Plaintiff is advised that the next step in Plaintiff’s case will be for the Court to conduct an initial review of Plaintiff’s claims to determine whether summary dismissal

is appropriate under [28 U.S.C. § 1915\(e\)\(2\)](#). The Court will conduct this initial review in its normal course of business.

Dated this 14th day of August, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon". The signature is stylized with a large, circular initial "J" and a long, horizontal stroke extending to the right.

Joseph F. Bataillon
Senior United States District Judge